IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1893 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANKAJBHAI HASMUKHBHAI RAJYAGURU

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1893 of 2000

MR MUKESH H RATHOD for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 05/11/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the order of termination of the petitioner dated 5.7.1999, as being illegal, unjust and unlawful.

2. The short facts leading to the present petition

are that the petitioner was initially engaged as Peace Worker with the respondents with effect from 1.1.1992. The petitioner's service however, came to be terminated by an oral order with effect from 15.12.1993. The petitioner challenged this action of the respondents by raising an industrial dispute before the Labour Court, Bhavnagar and the Reference (LCB) No. 393 of 1995 came to be allowed by the Labour Court, Bhavnagar, by its award dated 22.2.1997. By the said award, the Labour Court was pleased to set aside the termination of the petitioner and was further pleased to direct reinstatement with full backwags.

3. It is not in dispute that pursuant to the said award of the Labour Court, Bhavnagar, the petitioner came to be reinstated in service on 1.9.1998. The backwages awarded by the Labour Court were also paid in due course of time. Once again by an order dated 5.7.1999, the services of the petitioner came to be terminated by the respondents. The petitioner has challenged the said action of the respondents in terminating his service and has raised various grounds in the petition. Learned Advocate for the petitioner however, confines his submissions to the grounds as incorporated in the petition by way of amendment permitted on 18th October, 2004, and has contended that the action of the respondents was in violation of the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act. It is contended that the respondents have not issued a notice or offered notice pay to the petitioner, nor has the retrenchment compensation was paid to the petitioner before terminating his service. It is further contended that the respondents have also breached the principles of last come first go and have thereby violated the provisions of Sections 25G and 25H of the Industrial Disputes Act. It is pointed out that the stand of the respondents that only retired Mamlatdars or Deputy Mamlatdars can be engaged as Peace Workers, is not correct and Shri G.S. Mehta and Shri J.N. Rathod, who were retired Clerks, have been appointed as Peace Workers.

4. Though affidavit-in-reply has been filed by the respondents opposing the petition, no affidavit-in-reply has been filed after the petition was amended, wherein the said grounds of violation of provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act were specifically taken.

5. Learned Assistant Government Pleader Mr. Gohil has drawn my attention to the affidavit in reply filed on

19th February, 2001, and contended that the petitioner was engaged purely on adhoc basis and his services could be terminated without any prior notice or intimation. It is further contended that for appointment to the post of Peace Workers, only retired Mamlatdars and Deputy Mamlatdars were considered and the petitioner therefore, could not be continued on the said post. It is however, not controverted that the trial Court had directed reinstatement of the petitioner which was carried out on 1.9.1998, and full backwages as directed by the Labour Court were also paid. The petitioner's contention regarding violation of the provisions of Section 25F of the Industrial Disputes Act have not been met with in the affidavit-in-reply. However, it is orally contended on behalf of the respondents that when the petitioner does not fulfil the qualification requirement as per the Government Policy, his termination was justified and should not be interfered with.

6. It is not in dispute that the petitioner was initially engaged on the post of Peace Worker with effect from 1.1.1992 and continued in the said position till 15.12.1993. His termination with effect from 15.12.1993 was challenged before the Labour Court, Bhavnagar and the Labour Court, as noted above, set aside his termination and reinstated him in service with full backwages. Pursuant to this award of the Labour Court, Bhavnagar, the petitioner actually came to be reinstated in service on 1.9.1998 and was also paid the backwages. The petitioner thereafter continued in the engagement till 5.7.1999, and once again he was terminated from service. There is no dispute raised about the fact that before terminating his service, the respondents had not issued any notice, nor offered notice pay to the petitioner as required under Section 25F of the Industrial Disputes Act. Nor was the petitioner paid retrenchment compensation as required under Section 25F(b) of the Industrial Disputes Act. In view of this uncontroverted factual position, though provisions of Industrial Disputes Act are sought to be relied upon for challenging the termination order, I do not find it necessary to relegate the petitioner to the alternative remedy under the provisions of the Industrial Disputes Act. Since the termination of the petitioner on 15.12.1993 was set aside by the Labour Court, Bhavnagar and he was ordered to be reinstated with full backwages, the petitioner's tenure with the respondents would span from 1.1.1992 to 5.7.1999, when he was terminated on second time. The respondents were therefore legally duty bound to follow the provisions of Section 25F of the Industrial Disputes Act, and offer notice or notice pay and retrenchment

compensation to the petitioner before validly bringing about termination of his service. Since these legal steps were admittedly not taken, the termination of the petitioner with effect from 5.7.1999 cannot be upheld. The same is therefore, quashed and set aside.

7. In view of the fact that I find that the respondents have breached the provisions of Section 25 F of the Industrial Disputes Act, the reliance placed by the learned Assistant Government Pleader in the decision of this High Court reported in 2001 (1) GLR 860 (Jashvantkumar J. Desai V. Sabarkantha District Panchayat & ors.), which is based on the provisions of Bombay Civil Service Rules, 1959, would not apply to the facts of this case. It may be noted that the respondents have not raised any dispute about the organisation in which the petitioner was engaged not being an industry within the meaning of provisions of the Industrial Disputes Act before the Labour Court, Bhavnagar in the earlier round of litigation or before this Court in the present petition.

8. In the result, the petition is partly allowed. The impugned action of the respondents in terminating the services of the petitioner is set aside and the respondents are directed to reinstate the petitioner in service with continuity in service, however, with 25% backwages at the concession of the learned Counsel for the petitioner, who submits that in case the respondents prefer to appeal against this order, the petitioner should be permitted to contest the issue of backwages on merits. While granting such permission, it is expected that the reinstatement will be carried out within a period of six weeks from the date of receipt of a copy of this order.

9. The petition is partly allowed. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

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